

STATE OF MONTANA TWENTY-FIRST JUDICIAL DISTRICT
RAVALLI COUNTY

HON. JAMES A. HAYNES
DISTRICT COURT JUDGE
DEPARTMENT TWO



RAVALLI COUNTY COURTHOUSE
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November 9, 2006

Senator Dan McGee
1925 Pinyor Drive
Laurel, MT 59044

EXHIBIT 4

RECEIVED

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OFFICE OF THE STATE
PUBLIC DEFENDER

RE: Public Defender Eligibility / Reimbursement

Dear Senator McGee:

A copy of my September 14, 2006 letter to Sen. Jim Shockley has been previously sent to you, as well as the responses from Sen Shockley, Randy Hood, Chief Public Defender, and Ed Sheehy, Region 2 Deputy Public Defender. Some concerns remain after receiving these responses:

1. Under the recent decision in *State v. Rios*, 2006 MT 256, a district court now lacks authority to inquire -- specifically, powerless to initiate inquiry -- into a criminal defendant's eligibility for public defender services. It may seem a small matter. Mostly district courts are happy to be relieved of the former duty to perform a financial eligibility review in every case. However, occasionally we think we smell a skunk. Restoring the district court's discretion to be able to inquire -- to initiate an inquiry -- whether there is a skunk in the woodpile, improperly gnawing on public funds, seems appropriate.

2. I accept that Linda Harris has over \$250,000 in real and personal assets, and minimal monthly income. Perhaps she should be deemed eligible for a public defender to represent her. Perhaps not. She hardly seems indigent. Should Ms. Harris have to pay her real property taxes? Medical or prescription drug costs? These are policy questions. However, expanding the OSPD eligibility criteria will increase the demand for and use of public defenders. This expansion will take work away from competent attorneys in private practice.

The charge against Linda Harris is a DUI #6, a felony. Under the current state of the law -- *Rios* -- this Court is told it has no business initiating inquiry about Harris' OSPD eligibility. That is, even though OSPD acknowledges its Determination of Indigence criteria 3.4 is "rather subjective," OSPD's determination under the eligibility criteria established by OSPD is the final word (copy enclosed). A private attorney, who might have charged Harris \$5,000 to represent her, is out this work and income. Harris keeps her \$250,000 home equity, available to pass on to her heirs, or to spend on something more pleasurable than paying an attorney's time and advice in

defending against this DUI 6th charge. OSPD seems disinclined to inconvenience Ms. Harris to take out a \$5,000 mortgage and pay for a privately retained lawyer. Again, this is a policy matter.

3. Legislatively, please give some consideration to strengthening the statutory ability to recover public monies spent on public defenders in both criminal and civil cases. Regarding criminal cases, upon conviction of a crime, and as a condition of sentencing, section 46-8-113 MCA currently contains language that says "... a court may require a convicted defendant to pay the costs of counsel assigned to represent the defendant."

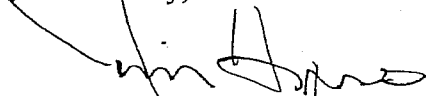
Perhaps a counterpart statute in Title 47 which directs OSPD to timely provide the sentencing judge an accurate breakout of all costs OSPD incurred in its representation of a Defendant, or OSPD could be required to provide the sentencing court or adult probation officer preparing the pre-sentence investigation report all of the financial eligibility information initially disclosed by the defendant when he/she applied for OSPD eligibility.

There appears to be virtually no effective statutory mechanism to effectively recover monies spent on OSPD in civil cases.

Practically, if or when criminal defendants such as Linda Harris are convicted, and determined to have the financial ability to repay, and ordered to repay OSPD costs as a sentencing condition, it still requires a state FTE position to pursue enforcement of these payments, or court proceedings to obtain a judgment, or any of myriad and sundry other phases of debt collection work: a 50% - 50% (or less) recovery proposition at best. Finally, I would note no request for repayment form (copy enclosed) has yet been filed in Ms. Harris' case, indicating whether OSPD believes Ms. Harris is "not indigent."

I served as a public defender for three years early in my legal career, and fully support this essential component of our criminal justice system. I appreciate Montana has implemented -- appropriately in my view -- a state wide public defender system. The above comments are meant to offer suggestions for consideration, as slight adjustments, to improve an eligible person's financial responsibility to this newly installed system.

Sincerely,



James A. Haynes, District Judge
Department No. 2

JAH/bk

cc: Senator Jim Shockley
✓Randy Hood, Chief Public Defender
Edmund Sheehy, Jr., Region 2 Deputy Public Defender
Dave Stenerson, Ravalli County Public Defender
Jim Taylor
George Corn, Ravalli County Attorney